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Attorney Docket no: PHO-107 DIV

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

Dees et al.

Serial No.: 09/382,622

Filed: August 25, 1999

For: High Energy Phototherapeutic Agents

Examiner:

Art Unit:

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: the Assistant Commissioner for Patents, Washington, D.C. 20231 on April 6, 2000
(Date of Deposit)

Christine Muilenburg
Name of applicant, assignee, or Registered Rep.

Christine Muilenburg 4-6-2000
Signature Date

INFORMATION DISCLOSURE STATEMENT

Assistant Commissioner for Patents
Washington, D.C. 20231

Dear Sir:

Pursuant to 37 C.F.R. §1.97, as revised on February 4, 1992, 1135 OG 23-24, Applicants hereby call the Examiner's attention to the following facts, which are being submitted in the parent application and may be material to the examination of this application.

Prior to October 1998, the inventors of the present application conceived of the subject matter of the present invention.

In October, 1998, Photogen, Inc. ("Photogen"), the assignee of the present application, and at least one of the named inventors received a copy of an invention disclosure document from Dr. Gerald Wolf of Massachusetts General Hospital ("MGH"). Photogen had an arrangement with MGH for Dr. Wolf to conduct testing of the efficacy inventions conceived by the inventors from Photogen.

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On information and belief, the subject matter of Dr. Wolf's invention disclosure was included within an application filed by MGH for Dr. Wolf on October 29, 1998 and which was assigned serial no. 09/183,166. Applicants understand that Dr. Wolf asserts a conception date, for the subject matter of his application, which is many months prior to October 1998.

In October, 1998, Dr. Eric Wachter, one of the inventors of the present invention concluded that in light of a prior art reference to Norman, the patentability of the disclosure of Dr. Wolf was not yet established and that the Dees et al. application would be drafted independently of Dr. Wolf's disclosure.

On December 21, 1998, the above-identified 09/216,787 application was filed.

No inference should be drawn that any Applicants believe that the following facts are material to the subject invention, disclose the subject invention or disclose a method or apparatus equivalent to the subject invention.

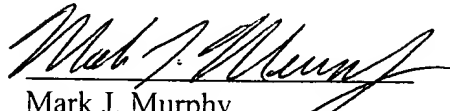
The citation of these facts herein is not to be construed as an admission that any subject matter disclosed in the facts is necessarily within the inventive field of endeavor, that any disclosure is necessarily prior in time to a particular date which may be relevant to the instant patent application, and/or that any disclosure is otherwise necessarily prior art with respect to the instant invention.

Applicant also respectfully reserves the right to later set forth how the instant invention is distinguished over these facts or any document or other art, including the disclosure of any documents that may be cited by the Examiner in rejecting a claim in the instant patent application.

Please charge our Deposit Account No. 50/1039 for any necessary IDS filing fee to the extent any enclosed funds are insufficient.

Respectfully submitted,

Date: April 6, 2000


Mark J. Murphy
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